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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,494	03/30/2004	Vincent T. Kozyrski	6611-0070	4927

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MCCORMICK, PAULDING & HUBER LLP  
CITY PLACE II  
185 ASYLUM STREET  
HARTFORD, CT 06103

EXAMINER

WEEKS, GLORIA R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/813,494

Applicant(s)

KOZYRSKI, VINCENT T.

Examiner

Gloria R Weeks

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.  
4a) Of the above claim(s) 28-40 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/30/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date, \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

Art Unit: 3721

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-27, drawn to an apparatus for installing framing material hangers, classified in class 227, subclass 151.

Group II. Claims 28-40, drawn to a stack of framing material hangers, classified in class 411, subclass 451.1.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention disclosed in Group I has separate utility such as driving framing hangers into a frame structure, and is not limited to using the frame hangers of Group II. There are no structural elements disclosed in Group I that are particularly directed towards the connected frame hangers of Group II. See MPEP j E06.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Richard Getz (Reg. No. 36,147) on February 17, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 28-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Priority***

4. This application discloses and claims only subject matter disclosed in prior Application No. 10/734,837, filed December 12, 2003, and names an inventor or inventors named in the prior application. Accordingly, this application may constitute a continuation or division. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 9 recites the limitation "the side panel" in line 1. There is insufficient antecedent basis for this limitation in the claims.

Claim 8 recites the limitation "the table" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3721

8. Claims 1-6, 8, 10-12, 14-16 and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Raffoni (US 2001/0013530 ~~now USPN 6,651,861~~).

In reference to claims 1-6, 8, 10-12, 14-16 and 20-27, Raffoni discloses an apparatus for installing fasteners in a workpiece, comprising: a support frame (1); a selectively operable hanger actuator (10) attached to the support frame (1), the hanger actuator (10) including a piston (12) having a plunger (14) that travels in a stroke direction; a guide assembly (C) having an internal aperture operable to guide a fastener; a magazine (M) that extends perpendicular to the stroke direction of the actuator (10) and operable to feed one or more fasteners into the guide assembly (C), and wherein operating the hanger actuator (10) causes the piston (12) to drive at least one of the fasteners through the guide assembly (C); a L-shaped arm (21) and a mounting plate (22) attached to one end of the L-shaped arm (21); a base panel (2) that extends in a plane that is perpendicular to the stroke direction of the piston (12), wherein the hanger actuator (10) is selectively positionable (6) to the base panel (2); a fixed back panel and side panel (3) connected to the base panel (2); workpiece supports (25, 26) out of contact with the base panel (2); and a hanger biasing mechanism (53) connected to the magazine (M).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7, 9 and 18-19 are rejected under 35 U.S.C. 103(a) as being anticipated by Raffoni (US 2001/0013530 ~~now USPN 6,651,861~~) in view of. Pistorius (USPN 4,572,420).

Regarding claims 7 and 9, Raffoni discloses an apparatus for installing fasteners in a workpiece, wherein the back panel and side panel (3) are fixed to a base panel (2). Pistorius teaches an apparatus for installing fasteners in a workpiece wherein the back panel (38) and side panel (42) are selectively positionable relative to a base panel (12). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the back and side panel of Raffoni to the repositionable back and side panel of Pistorius for the purpose of accommodating various angled or shaped work pieces against the base panel.

In reference to claims 18 and 19, Raffoni discloses an apparatus for installing fasteners in a workpiece, wherein the plunger (14) has a contact surface, but is not disclosed as having any form of retention means. Pistorius teaches an apparatus for installing fasteners in a workpiece wherein the contact surface of a plunger (94) has magnets (144, 146). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the plunger of Raffoni to include the magnets of Pistorius for the purpose of positively aligning the fastener on the plunger with the workpiece.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being anticipated by Raffoni (US 2001/0013530 ~~now USPN 6,651,861~~) in view of Burlingame (USPN 6,305,891).

With respect to claim 13, Raffoni discloses an apparatus for installing fasteners in a workpiece, wherein the magazine (M) is elevated for the purpose of urging the fasteners towards a guide assembly (C) and a plunger, but does not disclose the use of a spring biasing means. Burlingame teaches an apparatus for installing fasteners in a workpiece, wherein the magazine

Art Unit: 3721

(168) having a fastener biasing mechanism including a spring (172) and block. It would have been obvious to one having ordinary skills in the art at the time of the invention to modify the elevated magazine of Raffoni to the spring biased magazine of Burlingame as an alternative means of feeding the fasteners to the guide assembly and plunger, as well as for the purpose of providing a force that would reduce the probability of the fasteners jamming in the magazine.

12. Claims 17 is rejected under 35 U.S.C. 103(a) as being anticipated by Raffoni (US 2001/0013530 ~~now USPN 6,651,861~~) in view of Lorincz (USPN 5,890,276).

Regarding claim 17, Raffoni discloses an apparatus for installing fasteners in a workpiece, wherein the plunger (14) has a contact surface, but is not disclosed as having any form of retention means. Lorincz teaches an apparatus for installing fasteners in a workpiece, wherein the contact surface of a plunger (17) includes position tabs (19). It would have been obvious to one having ordinary skills in the art at the time of the invention to modify the plunger of Raffoni to include the position tabs of Lorincz for the purpose of positively aligning the fastener on the plunger with the workpiece.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

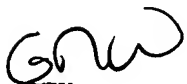
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

Art Unit: 3721

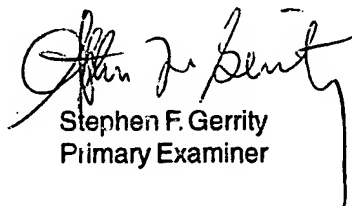
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks  
Examiner  
Art Unit 3721

  
grw

February 22, 2005

  
Stephen F. Gerrity  
Primary Examiner